

In its own area, the Grand Central opinion may have the same effect.

It is worth noting that the size of the disputed project may have made this a harder—and better—case for the preservationists to win. Usually a city government is confronted with a small landmark to save. Hard cases are the ones that reach the Supreme Court, and the six justices forming the majority are a cross-section of the current court adding to the value of this case as a precedent. Many persons describe the present Supreme Court as conservative, and this point probably contributes to the significance of this support in a quite new area of law.

In deciding this specific controversy, Justice William J. Brennan, Jr., chooses to place the dispute in the context of what has been accomplished by historic preservation. (The dissenting opinion confines itself to the current dispute.) Justice Brennan notes, "Over the

past fifty years, all 50 states and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance."

Describing the New York City statute as "typical of many urban landmarks laws," the opinion gives recognition to the municipal laws passed to protect historic buildings "by involving public entities [landmark or historic district commissions] in land use decisions affecting these properties and providing services, standards, controls and incentives that will encourage preservation by private owners and users." While there are restrictions in the New York law, according to the court "the major theme of the Act is to ensure" landmark owners a "reasonable return" and "maximum latitude" consistent with preservation goals.

In a footnote Justice Brennan adds, "The consensus is that widespread public ownership of historic

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## The (H-) 1 and Only

### *Fort Lauderdale's Historic District*

*By Elizabeth S. Bolge*

Though the legal battles over the preservation of Grand Central Station may seem remote, they may soon take on special importance as several Florida cities — including Boca Raton, Miami, and Miami Beach — move to enact or enforce historic district statutes. Undoubtedly, the questions raised by the Supreme Court case of Penn Central Transportation vs. the City of New York will be echoed in local council chambers and in zoning board meetings: are a private property owner's rights limitless or must they conform to the cultural needs of the community? What constitutes an unfair "taking" and what will suffice for due process? And on and on...

Perhaps, then, this is a good time to review the progress of south Florida's only historic district outside of Key West: the Fort Lauderdale Historic District, or H-I (after its zoning classification) for short.

The district, located just west of Fort Lauderdale's downtown government and finance area, and north of the New River was established by local ordinances in 1975. The Fort Lauderdale Historic Preservation Board, created by the same legislation, governs the development and use of the land and structures within the five-square-block district. Its powers are unusually broad: it can exercise control over the exterior appearance of any structure, new or



Ralph Megna/Fort Lauderdale Historic Preservation Board

The district's Reed Bryan House retains its unusual roof of patterned metal, typical of many structures built shortly after the turn of the century in south Florida.

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old; it can thwart attempts at demolition or new construction; it can rule certain businesses or building uses inappropriate; and it has a voice in the disposition of city-owned properties within H-I.

On the whole, free enterprise and a positive outlook, both individual and collective, have been responsible for upgrading the neighborhood, previously depressed and in disrepair. Bud Kirkpatrick exemplifies the work accomplished by a private individual's determination — he has rehabilitated several commercial buildings, the C. E. Parks Service Station, and has begun work on the Bivans Motor

properties in urban settings is neither feasible nor wise. Public ownership reduces the tax base, burdens the public budget with costs of acquisitions and maintenance and results in the preservation of public buildings as museums and similar facilities, rather than as economically productive features of the urban scene."

After this detailed and sympathetic introduction, the court returns to this topic 20 pages later in the opinion and approves of laws designating and regulating individual landmark buildings. It says, "Stated baldly, appellant's [the Penn Central] position appears to be that the only means of ensuring that selected owners are not singled out to endure financial hardship for no reason is to hold that any restriction imposed in individual landmarks pursuant to the New York scheme is a 'taking' requiring the payment of 'just compensation.' Agreement with this argument would

of course invalidate not just New York City's law, but all comparable landmark legislation in the nation. We find no merit in it."

This language is likely to encourage the designation of more individual landmarks in addition to the many buildings that are already protected by being within a historic district. Where the mayor and the city government are committed to an expansion of the local historic preservation programs, it should be easier to overcome legal objections to bringing individual structures under the jurisdiction of a municipal landmark commission. This agency will then have the responsibility to try to find some alternative to demolition if the tearing down of a landmark is threatened. Elsewhere in the opinion Justice Brennan shows his awareness of the fact that landmarks commissions may have to give permission to demolish a building when acceptable alternatives are not found.



Ralph Megna/Fort Lauderdale Historic Preservation Board

One of the Fort Lauderdale Historic District's greatest assets is its location on the New River. The City plans to continue a riverwalkway begun further downstream through the district. Among the buildings it will pass is the New River Inn, at right.

Company. He has been inspirational to many of the newer residents and artists who live and work in the area.

#### *Early Projects*

Pivotal to early reclamation activity in the district was the relocation, rehabilitation, and operation of the King-Cromartie House as Broward County's first historic house museum. The joint effort of the Broward County School System, the Fort Lauderdale Historical

Society, Inc., the Junior League of Fort Lauderdale, Inc., and the City of Fort Lauderdale in accomplishing this task led the way for rehabilitation of the New River Inn as the Discovery Center, the work of many local and state leaders as well as countless community participants. The conversion and adaptive usage of the Newsham Warehouse as the home of the collections and museum of the Fort Lauderdale Historical Society, Inc., followed as the result of collaboration between the city and the Society. Currently, the city is offering

One consequence of the Grand Central opinion may be to shift the tactics of owners who do not want their buildings designated as landmarks. They may increase their opposition as expressed to the mayor and other political figures rather than relying on the fears about the constitutionality of a designation.

A significant victory for preservationists is the Supreme Court's holding in this case that property was not taken without compensation when government restricted the use of a landmark site the owner had wanted to redevelop. The "taking" issue has been a major problem whenever preservationists wish to regulate a historic building, and now the Supreme Court has related a historic preservation law to zoning and other accepted uses of the police power.

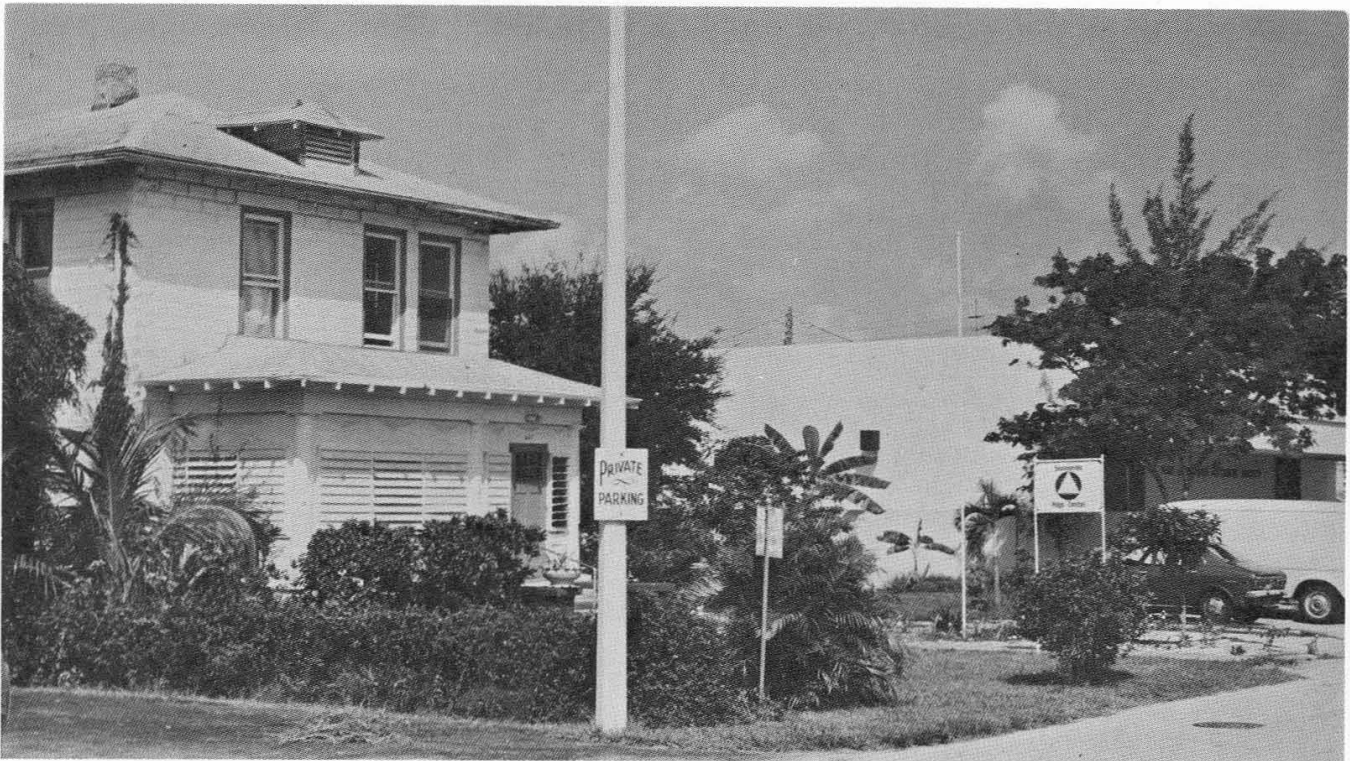
The court notes that it "has upheld land use regulations that destroyed or adversely affected recognized real property interests" when a state court has "rea-

sonably concluded that 'the health, safety, morals or general welfare' would be promoted by prohibiting particular contemplated uses of land."

#### *Dissenting View*

Early in the dissenting opinion, it is stated, "only in the most superficial sense of the word can this case be said to involve 'zoning.'" However, the majority opinion uses a number of zoning cases to resolve the controversy. It refers with approval to cases that upheld zoning and other land use laws, although owners suffered large diminution in the value of their property. In one case a sand and gravel mining business was closed down.

In historic preservation situations, city officials are often confronted with a related but different problem. The owners refer to the possibility that they may make large profits on the property through a development at some point in the future. In response to this type of



Ralph Megna/Fort Lauderdale Historic Preservation Board

The P. N. Bryan House (c. 1905) was built by the same man who organized the construction of the FEC Railroad immediately north of the New River. The two-story, rusticated block structure is currently owned by the City of Fort Lauderdale.

the properties it owns for long-term lease. A group known as Riverfront Restorations, Inc., is interested in developing the Reed and Tom Bryan homes in a novel and historically compatible way. The P. N. Bryan residence will be leased to the Discovery Center for office space and will only partially fill the need for expansion being experienced by this new facility.

Many current district supporters were one-time doomsday sayers; the slow but clear progress has caused their conversion. Architect Herschel Shepard, head of the consulting firm responsible for the 1977 inventory and survey, recently revisited the district and was pleased to note that limited government involvement and maintenance of a general "hands-off



argument that was made in the case, Justice Brennan says it is "quite simply untenable" for the Penn Central to assert that they "may establish a 'taking' simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development."

Continuing its analysis, the court says "the New York City law embodies a comprehensive plan to preserve" individual landmarks, thus rejecting the argument that a few buildings are being discriminated against under the statute. Next the court discusses whether the New York City landmarks law places too great a burden on Penn Central when compared with owners of adjacent non-landmark buildings. It notes, "Legislation designed to promote the general welfare commonly burdens some more than others," and it cites four earlier decisions sustaining regulations although the owners of the property "were uniquely burdened."

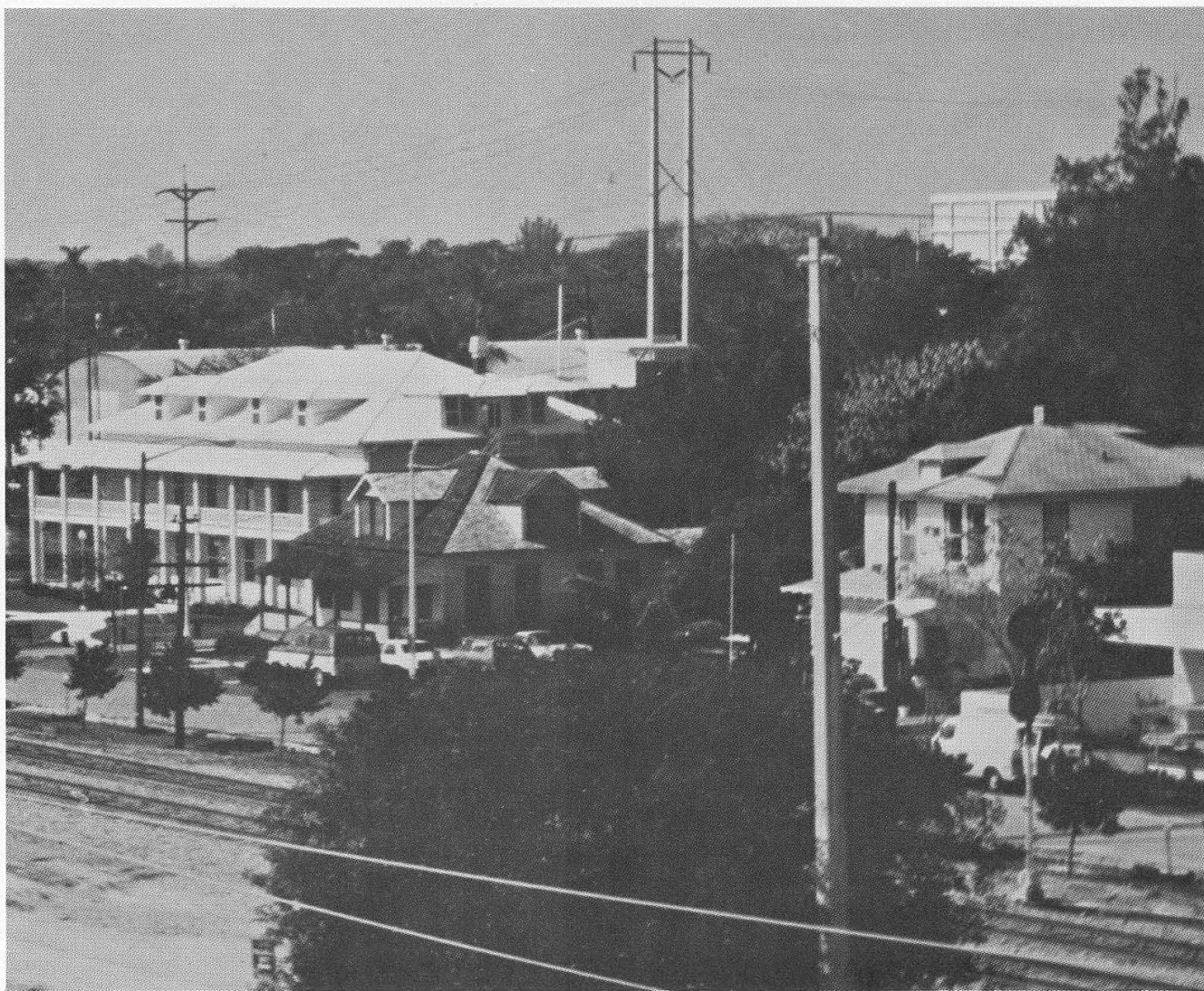
As a final point on the "taking" issue, the Supreme Court gives great weight to the legislative decision to pass a historic preservation law. The court says "we are unwilling" to "reject the judgment of the New York City Council that the preservation of landmarks benefits all New York citizens and all structures." This judicial response disposes of the landmark owner's argument that it is solely burdened and unbenefited.

While landmark owners in the future may argue that a historic preservation law and its implementation take their property without compensation, the Supreme Court precedent in the Grand Central case will give strong support to the preservation program then under attack.

Having decided that there was no "taking" under the provisions of this landmarks law and thus no need for just compensation, the court discusses the present status of the Terminal. The court evaluates the applica-

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The southeast corner of the existing district is defined by the FEC Railroad and the New River. From the left to right the buildings are the New River Inn, the King-Cromartie House, the P. N. Bryan House, and the Fort Lauderdale Historical Society Museum and Archives. The New River Inn is listed on the *National Register of Historic Places*.



Broward County Historical Commission

tion of the New York City landmarks law to Grand Central and determines that the use of the law there does not have such a severe impact that the government must employ its eminent domain powers. Justice Brennan says, "The New York City law does not interfere in any way with the present uses of the Terminal. Its designation as a landmark not only permits but contemplates that appellant may continue to use the property precisely as it has for the past 65 years: as a railroad terminal containing office space and concessions. So the law does not interfere with what must be regarded as Penn Central's primary expectation concerning the use of the parcel. More importantly, on this record, we must regard the New York City law as permitting Penn Central not only to profit from the Terminal but to obtain a 'reasonable return' on its investment."

#### *Future Standard*

At the end of the court's opinion, it sets a standard for historic preservation laws that will be useful when efforts are made to save a threatened landmark. "The restrictions imposed are substantially related to the promotion of the general welfare and not only permit reasonable beneficial use of the landmark site but afford appellants opportunities further to enhance not only the Terminal site proper but also other properties." Related to this standard is the court's statement, in a footnote, that the landmark owner "may obtain relief" when its building is no longer "economically viable."

In his dissent, Justice William H. Rehnquist says, "Valuable property rights have been destroyed" by the action of the New York City Landmarks Commission.

He states, "A multimillion dollar loss has been imposed on appellants; it is uniquely felt and is not offset by any benefits flowing from the preservation of some 500 other 'landmarks' in New York." The dissent adds, "If the cost of preserving Grand Central Terminal were spread evenly across the entire population of the City of New York, the burden per person would be in cents per year—a minor cost. . . ."

Differing with the majority, Justice Rehnquist declares, "A taking does not become the noncompensable exercise of police power simply because the government in grace allows the owner to make some 'reasonable' use of his property."

Chief Justice Warren E. Burger and Justice John P. Stevens joined in dissent.

#### *Principles Established*

In the coming months and years there will be additional preservation lawsuits in which lower courts will apply the principles established by Justice Brennan's opinion. Some landmarks will still be lost as will some law suits. Nevertheless, historic preservation today is a much stronger movement because our highest court has examined and approved the way Americans try to save their landmarks.

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policy" recommended in the early study were, in fact, working extremely well.

Very recently, the Miami-based architectural firm SKBB, in association with nationally-recognized preservationist Richard Frank, has been asked to prepare a master plan for the development of the district. The goal for this plan, set by the city's preservation board, is "to develop a historic district which is historically sound, economically and culturally viable, and aesthetically pleasing as a frame of reference for the community, for today and for the future."

The importance of such a carefully structured and articulated plan, and the potential it holds for the whole community, has often been stressed by the preservation board's current chairman, Sandra Casteel. "Nestled away by the railroad and the river," she says, "The H-I District is a little jewel, remarkably untouched by the city's rapid development. The many consultants who have discussed H-I are amazed that the homes and stores have remained intact. We are thankful that they are there to work with, to restore vitality to the downtown area. So close to the new, they provide an exciting combination."